IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.4345 OF 2005

Mustanshir Kasam Ali Vakharia).. Petitioner

Versus

Ram Veerbhadra Telkar and anr.).. Respondents

Mr.P.S. Dani for the Petitioner.

Mr.G.S. Godbole i/b.Shamim & Co. for the Respondents.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 26TH OCTOBER 2005

P.C.:

. This Petition challenges the order of the Appeal Court whereby the Appeal Court has directed that the Plaint should be returned to the Petitioner-Plaintiff before the trial Court in accordance with the provisions of Order 7 Rule 10 of the Civil Procedure Code for presenting the same before the appropriate Court. The Appeal Court has arrived at this finding by considering Section 14(1) of the Bombay Rent Act. This issue regarding the Court not having jurisdiction because of provisions of Section 14(1) of the Bombay Rent Act has not been pleaded by the Respondents before the trial Court. This issue was also not raised when the trial Court heard the arguments on the Interim Notice. Therefore, in my view, the decision with regard to Appeal

No.125 of 2005 which has been filed by the Respondents in respect of the jurisdiction of the trial Court to decide the matter, must be set aside. However, Mr.Godbole for the Respondents, submits that he does not press this Appeal and seeks liberty to raise the issue regarding jurisdiction with reference to Section 14(1) of the Act before the trial Court when all issues are heard.

2. As regards Appeal No.126 of 2005 which has been filed against the interim orders passed in Interim Notice No.5841 of 2004, the Appeal Court has not considered the merits as it has held it has no jurisdiction. In view of this, Appeal No.126 of 2005 is remanded to the Appeal Court for a decision on the validity of the interim orders passed by the trial Court, after hearing parties. The Appeal Court will decide Appeal No.126 of 2005 within one month from today.

3. Since Appeal No.125 of 2005 is not pressed by the Respondents, the issue which has been raised in that Appeal, can be raised by the Respondents before the trial Court at the hearing of the Suit.

4. Writ Petition disposed of accordingly.

5. The parties will maintain status quo as of today during the pendency of Appeal No.126 of 2005.